

August 3, 2015

Randall D. B. Tigue
Attorney at Law
201 Golden Valley Office Center
810 N. Lilac Drive
Golden Valley, MN 55422

RE: Findings of Fact, Conclusions of Law and Licensing Recommendation
License application dated July 08, 2014
Hearing date June 16, 2015
507 East Lake Street

To Mr. Tigue & Ms. Green,

We have received the Hearing Officer's recommendation regarding the license application for Kim Yi's, LLC. A copy of the decision is enclosed. The Community Development & Regulatory Services Committee of the Minneapolis City Council will consider this recommendation at a license hearing on **Tuesday, August 11, 2015**. Pursuant to M.C.O. § 259.255 the committee may hear argument from the parties or their counsel but may not take any further evidence. The hearing will take place during the regularly-scheduled meeting of the Community Development & Regulatory Services Committee in the City Council chambers, Room 317 Minneapolis City Hall which **commences at 1:30 p.m.**

The Licensee Applicant is further notified that counsel may represent it at the hearing and that it may submit any written arguments to the City Clerk (c/o: Irene Kasper, City Clerk's Office, Rm. 304, 350 5th Street S., Minneapolis, MN 55415) prior to the hearing, with a courtesy copy to be provided by electronic mail to Joel.Fussy@minneapolismn.gov.

If you have any questions regarding this process, visit minneapolismn.gov/hearings or call me at 612.673.2449.

Sincerely,



Christina Dowling
Legal Process Coordinator
Administrative Hearings

cc: Yong Green – 507 East Lake Street, Minneapolis, MN 55408
Yong Green - 4833 Valley View Road, Edina, MN 55424
Joel Fussy, Assistant City Attorney
Grant Wilson, Manager – Business Licensing
Michele Harvet, Inspector – Business Licensing

**CITY OF MINNEAPOLIS
DIVISION OF BUSINESS LICENSING**

BEFORE THE ADMINISTRATIVE HEARING OFFICER

In the Matter of the Massage and Bodywork
License Application of Kim Yi's LLC &
Yong Green d/b/a Kim Yi's.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW &
LICENSING RECOMMENDATION**

This matter came on for hearing before Minneapolis Administrative Hearing Officer Fabian Hoffner on June 16, 2015 at 1:30 p.m. in Room 310 of Minneapolis City Hall pursuant to M.C.O. § 259.255, *Adverse license action evidentiary hearings authorized*. Business License Manager Linda Roberts appeared on behalf of the Business Licensing Division of the City of Minneapolis, which was represented by Assistant City Attorney Joel Fussy. License applicant Yong Green of Kim Yi's LLC was present at the hearing and represented by attorney Randall Tigie. Based on the testimony adduced and evidence admitted at the hearing, the undersigned hearing officer makes the following:

FINDINGS OF FACT

1. License applicant Yong Green of Kim Yi's LLC (hereinafter the "Applicant") has operated a massage establishment at 507 East Lake Street for many years doing business as Kim Yi's or Kim's Place. In December of 2013 the City of Minneapolis adopted Chapter 286 of the Minneapolis Code of Ordinances that requires any massage or bodywork establishment to be licensed and to comply with a host of regulations. The Minneapolis Coordinating Committee to Prevent Sex Trafficking initiated the ordinance. Existing establishments, including the establishment operated by the Applicant, were given six months to apply for licensure and issued notices that required them to apply for licensure in order to continue operation. The Applicant filed an application for licensure in July 2014 and has been allowed to operate continuously while the application has been processed and investigated.
2. The Applicant has suffered no prejudice during the timeframe in which its license application has been considered since it has been allowed to continue operation. Additionally, as credibly testified to at hearing by Linda Roberts and Inspector Michele Harvet, the timeframe for consideration has been reasonable based on the licensing and police investigations associated with the establishment, the large number of establishments becoming initially licensed at the same time, and the scheduling of related administrative enforcement and licensing hearings providing due process to the Applicant.
3. On November 4, 2014 Minneapolis police conducted an undercover prostitution investigation at Kim Yi's. The investigation was prompted by multiple complaints

received by the police and the precinct's crime prevention specialist of illicit prostitution activity occurring at the establishment. As a result of this investigation, it was determined that an employee/contractor of the establishment had violated multiple provisions of M.C.O. § 286.100 by performing a massage while exposing her breasts and agreeing to perform an illegal sex act upon an undercover officer posing as a patron. The Applicant was found to have violated M.C.O. § 286.100(7) by knowingly allowing or suffering an employee or contractor to commit the violations (Ms. Green was present in the business at the time of the violation and was found in possession of the cash proceeds of the transaction) and additionally and alternatively through the vicarious liability imposed by that subsection upon the owner or operator of such an establishment. This incident resulted in a \$200 administrative citation (No. 14-1084080) being issued to the Applicant that was appealed and heard by a city hearing officer on March 23, 2015. Attorney Jeffrey Dean represented the Applicant during this proceeding. An Order was issued on April 30, 2015 upholding the citation as detailed above and the record reflects that the Applicant subsequently paid the citation after the close of this hearing, effectively waiving any further appeal rights. The April 30th Order, along with the entirety of the record of evidence and testimony from that proceeding, is hereby adopted and incorporated by reference into the record of this licensing proceeding.

4. The testimony and evidence adduced at the March 23rd citation appeal hearing as well as at the present license hearing establishes that the establishment is shabby, rundown and uninviting. It contains no exterior signage indicating what services are offered or what type of business establishment is housed inside. The primary customer entrance is in the back alley next to a dumpster through a locked metal door. The front door contains a small closeable slot to allow for communications with purported customers. The business operates on an all-cash basis and has had shower massage rooms, mirrors covering walls and windows and an onsite cat to manage a rat problem. Neither the Applicant nor any staff possess or display any certifications from any recognized massage schools or associations. These observations indicate that the establishment is physically and operationally different than the majority of massage and bodywork establishments that city staff would classify as legitimate and well run.
5. On April 16, 2015 a violation notice was issued to the Applicant regarding observations of litter in front of the premises, allegedly in violation of M.C.O. § 259.125, which requires daily cleaning of litter on the premises and within 100 feet of the property lines. The testimony and evidence at hearing regarding this violation indicates that no citation was issued and that the issue was abated. Therefore, this alleged violation is not considered as a basis to support the recommendation to deny the business license application.
6. The testimony and evidence adduced at hearing indicates that the business establishment received a notice of public nuisance pursuant to Minn. Stat. §§ 609.74 and 609.745 from Assistant Hennepin County Attorney Catherine McEnroe in February 2015 predicated upon the November 4, 2014 prostitution incident. In response to this notice, the testimony and evidence indicates that the Applicant agreed to conduct background checks on all new employees or contractors. At a March 20, 2015 inspection of the establishment by Ms. Roberts and Inspector

Harvet, the Applicant admitted that a new employee who was also present (Si Im Kim) had started the day prior. The Applicant had not conducted a background check on the new employee as agreed to in its response to the public nuisance notice.

7. The Applicant was served a business license records request on May 4, 2015 requesting copies of all employee and contractor records pursuant to M.C.O. § 286.80(b). The copies were required to be provided by May 11, 2015 and were never provided.
8. On May 12, 2015 the business licensing division notified the Applicant that its intention was to recommend denial of its massage and bodywork license application based on the incidents described above. The Applicant exercised its right to request an evidentiary hearing on the recommendation pursuant to M.C.O. § 259.255.

CONCLUSIONS OF LAW

1. Section 259.255 of the Minneapolis Code of Ordinances, entitled *Adverse license action evidentiary hearings authorized*, governs this proceeding. It provides that “[u]pon a determination by the licensing official to recommend adverse license action against a license ... applied for ... the licensing official may refer the matter to an administrative hearing officer pursuant to Title 1, Chapter 2 of this Code ... for the purpose of developing a record and providing a recommendation to the city council.” The ordinance further provides that the “hearing officer shall render a decision in writing ... which shall include findings of fact, conclusions of law and a recommendation regarding whether and what adverse license action is appropriate” which shall then be “considered by the appropriate committee of the city council” which shall have the duty of making the “final decision.” Based on the applicable provisions, it is apparent that this matter has proceeded in accord with all applicable notice and jurisdictional provisions of the Code.
2. The massage and bodywork licensing regulations provide in pertinent part that “[v]iolations of this chapter or of any other applicable provision of this Code may constitute just cause for the imposition of adverse license action” and that “[i]t shall be grounds for denial ... if ... [t]he licensee is found to be violating provisions of this chapter.” See M.C.O. §§ 286.90 & 286.110.
3. Contrary to the argument advanced by the Applicant at hearing, the fact that the Applicant was found to have violated provisions of the licensing chapter through the appeal of the administrative citation issued to it based on the November 4, 2014 incident does not preclude use of that adjudicated citation as a basis for license denial. M.C.O. § 2.30, *Alternative methods of enforcement*, specifically forecloses such an argument by providing that “[t]he administrative enforcement and hearing process provided for in this chapter will be **in addition** to any other legal or equitable remedy available to the city for Code violations” (emphasis added). Further, such an argument would be absurd in that it would preclude the city from extending due process to a license holder or applicant by first allowing for an appeal hearing on an alleged code violation resulting in a citation prior to utilization of that

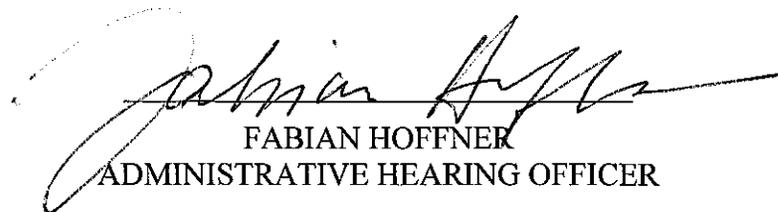
adjudicated violation in a subsequent adverse license action. There is no applicable legal authority that precludes a Minnesota municipality from utilizing a fully-adjudicated ordinance violation which has been the subject of a contested appeal hearing as a basis for a license denial or nonrenewal determination.

4. The November 4, 2014 fully-adjudicated citation for illegal nudity and sex acts committed during a massage (which is now incapable of being contested as a final Order has been issued and the fine paid) is, by operation of law, sufficient just cause, standing on its own, to support the license denial recommendation in this matter. See M.C.O. §§ 286.90 & 286.110. An overriding and primary purpose of the city council in adopting the massage and bodywork licensing program was to combat illicit prostitution and sex trafficking as evidenced by the legislative history of the ordinance as described in the record. In this case, city licensing staff and police had received a number of complaints regarding alleged illegal sex acts occurring at Kim Yi's and were able to confirm that such acts were taking place through the investigation leading to the now fully-adjudicated citation.
5. Additionally, the failure of the Applicant (1) to comply with the background check procedures it had promised in response to the county's public nuisance notice and (2) to respond to the city's business records request notice constitute additional cause to sustain the recommendation of city staff to deny the license application. Furthermore, the observations of the experienced inspectors as reflected in the record regarding the physical and operational deficiencies and characteristics of the establishment only serve to bolster the conclusion that this establishment should not be issued a license and that issuance of a license would carry with it an unacceptable level of risk to the public that the establishment would not be operated in conformance with the law or in a manner serving the public interest.

RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, as well as the entire record in this matter,

IT IS RECOMMENDED that the application of Kim Yi's LLC and Yong Green for a massage and bodywork license at 507 East Lake Street be **DENIED** by the city council of the City of Minneapolis.


FABIAN HOFFNER
ADMINISTRATIVE HEARING OFFICER

DATED: 7/27/2015